



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

VIA EMAIL – READ RECEIPT REQUESTED

April 9, 2021

Scott W. Flood
Blue Water Fisheries, LLC
PO Box 159
Contoocook, New Hampshire 03229

RE: Application for Blue Water Fisheries – NH0001620

Dear Mr. Flood:

Blue Water Fisheries submitted an application for a NPDES permit, dated January 27, 2021, for authorization to discharge from a new, offshore concentrated aquatic animal production facility. Upon review of the application, EPA determined that additional information would be required before it could be considered complete. On February 22, 2021, EPA requested additional application materials, including clarification of the signatory and the application form required from new industrial facilities (defined to include commercial facilities).

Blue Water Fisheries responded to EPA's request for additional information in a letter dated March 17, 2021. In the response, Blue Water Fisheries indicated that the applicant believes that a "member" of the LLC is consistent with a general partner, owner, or officer and, as such, meets the signatory requirements at 40 CFR § 122.22. This response fulfills EPA's request for clarification regarding the signatory.

Blue Water Fisheries also lists several reasons why it believes it is not required to submit NPDES Application Form 2D (New Manufacturing, Commercial, Mining, and Silvicultural Operations That Have Not Yet Commenced Discharge of Process Wastewater), including because the proposed facility is a concentrated aquatic animal production (CAAP) facility and, as such, is only required to submit Form 2B. NPDES application Form 2B is the appropriate form for both new and existing concentrated aquatic animal production facilities. *See* 40 CFR § 122.21(i). However, the NPDES application regulations indicate that more than one type of application form may be required for a single facility. *See* 40 CFR § 122.21(a)(2)(i). Form 1 and Form 2B provide limited information about the facility's owner, the preferred location of the pens,¹ and the proposed size and anticipated production levels of the facility. The application

¹ The application (Form 1) provides coordinates for eight proposed mooring grid sites for the submerged cage system in the Gulf of Maine. Two sites are listed as "preferred," but the applicant notes that the locations are subject to change as part of the permitting process. EPA acknowledges that the site locations are proposed and will expect the applicant to amend the NPDES application based on any changes in the coordinates of the final locations.

requirements for new sources and new dischargers at 40 CFR § 122.21(k) specify the information that must be submitted by new manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits with two exceptions: new storm water discharges from industrial facilities and facilities subject to 40 CFR § 122.21(h) (dischargers applying for NPDES permits which discharge only non-process wastewater not regulated by an effluent limitation guideline or new source performance standard). Your application, however, is for a new discharge which is neither stormwater associated with an industrial activity nor from a facility subject to 40 CFR § 122.21(h), as there are new source performance standards applicable to CAAP facilities that produce more than 100,000 pounds of aquatic animals per year. The application requirements at 40 CFR § 122.21(k)(1) through (7) are consistent with the information required by NPDES Form 2D. EPA recognizes that, as stated by Blue Water Fisheries, there are sections in Form 2D that are not likely relevant for the proposed facility, including “outfall” location (because the proposed facility is an offshore, submerged cage installation) (though the location of the discharges from the facility should be identified), a description of the treatment system, and a line balance diagram of water flow through the system. For items in Form 2D that do not apply, however, Blue Water Fisheries can simply indicate that the item is “Not Applicable,” while responding to the other items in Form 2D that *are* applicable.

That said, EPA also recognizes that additional information beyond that specified in Form 2D will be necessary to develop a permit. EPA cannot issue an individual NPDES permit before receiving a complete application for a permit. *See* 40 CFR § 122.21(e)(1). An application is complete when the permitting authority receives an application form and any supplemental information which are completed to its satisfaction.² In assessing completeness, EPA considers whether the information provided is sufficient to characterize the nature of the discharge, the quantity of pollutants, and their effect on the receiving water. After considering the applicant’s response, EPA maintains that the information sought by Form 2D is required for new sources and new dischargers under 40 CFR § 122.21(k), even with the understanding that not all of the sections may be relevant to this facility. Additional supplemental information will also be necessary before EPA has sufficient information to develop a permit. Unlike an existing facility, a new applicant has no record or monitoring data from previous permits to draw on for additional information. Supplemental information is necessary, in part, to evaluate whether the proposed discharge will cause unreasonable degradation of the marine environment in accordance with Clean Water Act Ocean Discharge Criteria. *See* 33 U.S.C. § 1343 and 40 CFR Part 125 Subpart M.

Finally, Section 6 of Form 2D requires applicants to identify if there are effluent limitations guidelines (ELGs) promulgated by EPA under CWA Section 304 that apply to the facility. In its response, Blue Water Fisheries mistakenly identifies this section as inapplicable to the proposed facility. Section 6 applies because EPA promulgated ELGs and New Source Performance Standards for the CAAP Point Source Category under Sections 304 and 306 of the CWA, which became effective on September 22, 2004. *See* 69 Fed. Reg. 51,891. *See also* 40 CFR Part 451.

² EPA notes that the applicant has also not provided any further information about the proposed land-based hatchery. For the purposes of this application, EPA views the land-based hatchery as a separate facility operating independent of the offshore system and expects that a second NPDES application may be required depending on your plans for the discharge of wastewater from this operation.

The ELGs apply to discharges from CAAP facilities (as defined at 40 CFR § 122.24 and 40 CFR Part 122 Appendix C) that produce 100,000 pounds or more of aquatic animals per year in a flow-through, recirculating, net pen or submerged cage system. The information provided in Form 2B preliminarily indicates that the proposed facility would produce more than 100,000 pounds of fish per year in a submerged cage system and, as such, would be subject to New Source Performance Standards. Therefore, the Region has tentatively determined that the proposed facility would be subject to New Source Performance Standards, would begin construction after the promulgation of such standards, and, as a result, would meet the definition of a “New Source” at 40 CFR § 122.2. *See also* 40 CFR § 122.29. The issuance of a NPDES permit to New Sources is subject to environmental review requirements of the National Environmental Policy Act (NEPA), as referenced in 40 CFR Part 6. *See also* 40 CFR § 122.29(c).

In an email accompanying the transmittal of the March 17 response letter, Blue Water Fisheries raised a concern that the NPDES application would be “closed administratively” if deficiencies are not addressed in a specific timeframe. EPA typically works with applicants to ensure that the appropriate forms and any supplemental information necessary to adequately characterize the nature and quantity of the discharge and its effect on the receiving water are submitted in a timely manner. We would also expect to work with you in that type of cooperative process. Although the NPDES application for Blue Water Fisheries is not yet deemed complete, EPA is prepared to work with you to learn more about the project and to develop a timeline for you to submit the necessary supplemental material.

If you have any questions relative to this submittal, do not hesitate to contact Danielle Gaito of my staff at (617) 918-1297 or by email at gaito.danielle@epa.gov. Please note that all correspondence pertaining to this permit must be made through email.

Sincerely,

Eric Wortman, Acting Section Chief
Industrial Permits Section
Water Division